

MEMORANDUM

DATE: November 19, 2001

TO: Department Directors, Affirmative Action/Equal Employment
Opportunity Officers, Unions, and Advocate Organizations

FROM: Executive Office
State Personnel Board

SUBJECT: STATE CIVIL SERVICE AFFIRMATIVE ACTION/EQUAL
EMPLOYMENT OPPORTUNITY PROGRAMS

The purpose of this memo is to advise you of the recent decision by the Court of Appeal on Government Code sections 19790-19799 that concern affirmative action and equal employment opportunity programs in the civil service system. The court concluded that those provisions that require departments to establish, and the State Personnel Board (SPB) to review and approve, annual employment goals and timetables and affirmative action plans to eliminate the underutilization of women and minorities facially violate the California Constitution as amended by Proposition 209. The court upheld those statutory provisions that require the collection and reporting of data on the underutilization of minorities and women in state agencies to monitor employment practices and upheld, in limited circumstances, the provisions permitting the SPB to adjust layoffs based on a finding of past discrimination. The full text of the decision is available at www.courtinfo.ca.gov/opinions/archive/C032042.PDF. Based on the court decision, the SPB will no longer require departments to prepare and submit for its approval annual affirmative action goals and timetables to address the underutilization of women and minorities.

Departments should be aware that recipients of federal funding may continue to be required by federal law to develop goals and timetables and affirmative action plans to address the underutilization of women and minorities. I encourage departments to consult with their legal counsel to determine if such requirements exist. In addition, state agencies continue to be required to annually develop and submit for SPB approval annual goals and timetables to address the underutilization of persons with a disability (Government Code section 19232) and goals and timetables for departmental upward mobility programs for persons in low paying occupational groups (Government Code section 19402). Departments also are obliged to establish effective programs to address the underrepresentation of persons with a disability and to establish effective upward mobility programs. The SPB will continue to work with departments to ensure the development of successful programs.

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Both state and federal laws prohibit discriminatory employment practices in state service and obligate state agencies to ensure that employment practices and policies provide equal employment opportunity and conform to applicable laws. The SPB will continue to vigorously enforce these provisions.

Finally, the SPB will be proposing legislation that will conform the statutes to the decision of the Court of Appeal and ensure that the state has an effective equal employment opportunity program.

If you have any questions concerning this memo, please contact Ted Edwards, Manager, Office of Civil Rights at (916) 653-1276 or TDD (916) 653-1498.

Walter Vaughn
Executive Officer